

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY APPLICATION No. 32 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DHIRENDRABHAI NANJIBHAI MEHTA - Applicant(s)**Versus****MANAGER, STATE BANK OF SAURASHTRA & 4 - Respondent(s)**

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Appearance :

MR TUSHAR MEHTA for Applicant(s) : 1,
None for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 01/02/2007****ORAL JUDGMENT**

1. By way of this Judge's Summons, the applicant -
one Shri Dhirendrabhai Nanjibhai Mehta has
prayed for an appropriate order to stay the

recovery of the amount from the applicant in pursuance of the order passed by the Debt Recovery Tribunal dated 1st May, 2006. It is also further prayed to direct the IDBI to recover the decretal amount as per the recovery certificate at Annexure : A from out of the sale proceedings of the company (in liquidation) and to restrain the respondents from implementing the recovery certificate. It is also further prayed to direct the IDBI to recover the amount with interest at the rate applicable and restrain the respondents from implementation of recovery.

2. It is required to be noted that the IDBI filed Civil Suit No.10 of 1988 against the applicant as well as the company in liquidation before the Civil Judge (SD), Porbandar and the said suit was decreed on 6th May, 1992 against the defendants for a sum of Rs.1,21,05,328/- with interest at the rate of 8.10 % p.a. It is required to be noted that so far as the applicant is concerned, a decree has been passed by the competent Civil Court against him as a

guarantor. It also appears that thereafter the IDBI filed Execution Petition No.5 of 1994 for execution of the decree and the company in liquidation as well as the applicant have challenged the decree by filing an appeal before the competent Appellate Court and the said appeal is pending. After filing of the Execution Petition No. 5 of 1994 and coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act; 1993, the IDBI requested the Executing Court to transfer the execution proceedings to the Debt Recovery Tribunal and accordingly, the proceedings came to be transferred to the Debt Recovery Tribunal and the same was registered as T.A. No. 984 of 1999. The IDBI requested to issue a recovery certificate for an amount of Rs.2,91,61,205/- along with interest at the rate of 8.10 % p.a. from 18th July, 2005 till realisation. In the meantime, the company went into liquidation and some amount has been realised by selling the properties of the company in liquidation. The respondent No.1 - Bank is trying to recover the

amount from the company in liquidation as well as from the applicant on the basis of the recovery certificate issued by the Debt Recovery Tribunal. It is required to be noted and as stated above, the recovery by the respondent No.1 - Bank is from the applicant as a guarantor and on the basis of the recovery certificate issued by the Debt Recovery Tribunal. By way of this application, the applicant wants direction against the respondent No.1 - Bank - original applicant directing the Bank not to recover the amount from the applicant. This Court has no jurisdiction to restrain the respondent No.1 - Bank from recovering the amount from the applicant. This is not a forum in which this Court can pass an order against an individual and this is not arising out of any company Court proceedings. Such an application is thoroughly baseless. Even otherwise, when the respondent No.1 - Bank is recovering the amount from the applicant on the basis of the decree and the recovery certificate issued by the Debt Recovery Tribunal as a guarantor, it cannot be said that

any illegality has been committed by the Bank. The applicant has already preferred an appeal before the competent Appellate Court and the same is pending. There is no order in the appeal with regard to stay of the recovery and/or any other order. The present application is not maintainable at all. Hence, this application is dismissed.

[M.R.Shah, J.]

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